

COMMONWEALTH OF KENTUCKY  
OFFICE OF FINANCIAL INSTITUTIONS

Office Of Financial Institutions Of The Commonwealth Of  
Kentucky, ex rel the Executive Director

PETITIONER

v.

AGREED ORDER

Consolidated Oil And Gas Corporation  
112½ Sevier Court  
P.O. Box 1750  
Barbourville, Kentucky 40906

and

Walter "Wally" Powell  
112½ Sevier Court  
P.O. Box 1750  
Barbourville, Kentucky 40906

RESPONDENTS

Upon agreement of the Petitioner and Respondents, the Executive Director of the Office of Financial Institutions ("Office") approving, and the Executive Director being duly and sufficiently advised, the Executive Director finds and orders as follows:

1. Pursuant to KRS 292.500(1) and 292.500(3), the Commissioner ("Commissioner") of the Department ("Department") of Financial Institutions, and the Deputy Commissioner ("Deputy") of the Department, in his or her absence, is charged with the administration and enforcement of KRS Chapter 292, the Securities Act of Kentucky, ("Act").

2. Pursuant to the authority of Executive Order 2004-031, entered January 6, 2004, by Governor, Ernie Fletcher, the powers and responsibilities of the Department to carry out and enforce the Act are now vested in the Office of Financial Institutions of the

Commonwealth of Kentucky ("Office") and the powers and responsibilities of the Commissioner and the Deputy are now vested in the Executive Director of the Office.

3. During portions of the investigation of this matter, said power and responsibility has been in the hands of the Commissioner and/or the Deputy as well as the Executive Director.

4. The Executive Director has affirmed all the acts of the Commissioner and/or the Deputy in this matter as applicable. All are in agreement on all matters in handling this matter.

5. Consequently, the Executive Director may act in the place of the Commissioner and Deputy in this action, and does, and this action is now brought by the Office of Financial Institutions rather than the Department of Financial Institutions under the direction and approval of the Executive Director rather than the Commissioner or the Deputy.

#### Factual Background and Circumstances

6. Respondent, Consolidated Oil And Gas Corporation is a Kentucky corporation engaged in the business of the exploration and drilling for oil and/or natural gas. It capitalizes its operations through the use of investor money raised from the public. Respondent, Walter "Wally" Powell, is the president of the corporation. Its principal offices are located at 112½ Sevier Court, P.O. Box 1750, Barbourville, Kentucky 40906.

7. As president of the corporation, Respondent, Powell, is a "control person" as that term is used in the securities laws.

8. Pursuant to the authority provided by KRS 292.330(12)(d), on January 26-27, 2004, the Kentucky Office of Financial Institutions, Division of Securities (the "Division"), attempted a compliance examination of the home office of Consolidated Oil & Gas Corporation, a promoter of securities representing interests in oil & gas drilling and production programs, offered through issuer-agents. Upon request, a subpoena was then issued on January 29, 2004 requesting copies of applicable examination documents.

9. Consolidated Oil & Gas Corporation has a form entitled Subscription Agreement Documents, which includes a Purchaser's Suitability Requirements section; however, the firm could not provide evidence that Dr. T. J. Allen signed the Subscription Agreement Documents at the time of his investment in the Knox County, Kentucky K-1 Turnkey Drilling Program. Therefore, no subscription agreement was signed or suitability information obtained for this investor. The failure to obtain suitability information is a violation of 808 KAR 10:030, Section 1(1) & (2).

10. Consolidated Oil & Gas Corporation has a duty to ensure that an investment is suitable for a given investor. Suitability must be documented, including the investor's investment objective, for all current and future investors. In addition, subscription agreements need to be executed by all investors.

11. KRS 292.327(2) requires all offerings falling under this provision to be filed with the Department within 15 days of the first sale. A review of the available documents showed that Dr. T. J. Allen's investment in the Knox County, Kentucky K-1 Turnkey Drilling Program was deposited on December 23, 2003, and the notice filing was not received by the Division until January 29, 2004, resulting in a violation.

12. Review of the Private Placement Memorandums found numerous deficiencies as follows:

a. There is no "Use of Proceeds" section that displays the planned uses, with each separate use, its dollar amount, and its percentage of the total, listed as line items in descending order of priority. Each use listed as a line item needs to be described in detail in the textual portion of this section.

b. There is no "Risk Factor" section that details all inherent, apparent, likely or conceivable risks to the success of the issuer and its business, or the market value of the securities.

c. There is no description of how suitability information will be obtained to ensure an investor is accredited, and that the investment is suitable.

d. There is no listing of the names of all officers, directors, and 10% shareholders of the issuer and program operator (in this case Consolidated Oil & Gas Corporation).

e. There is no aggregate annual compensation from all sources for all officers and directors, collectively for the last year and individually, for the three highest paid officers of the issuer and program operator, for the last year.

f. There is no description of the duties of each officer of the issuer and program operator, as well as all key employees, without whom operations would be impaired.

g. There are no current financial statements provided as an exhibit. These statements need not be audited, but they must be verified as true in all material aspects. Current is defined as dated no later than four (4) months from the date of the offering.

h. There is no opinion of counsel as to the validity of the lease.

i. The following statement should be included on the front cover of the offering document: "The securities described in this memorandum or subscription document are being offered pursuant to a claim of exemption from the registration requirements of the Securities Act of Kentucky (the "Act"), and may not be offered, sold, pledged, or transferred in the absence of an effective registration statement, or exemption

from the registration requirements of the Act, and federal securities laws, as adopted.”

j. There is no “Certain Transactions” or “Certain Relationships” section that discloses any and all business transactions or arrangements, past, present, or planned that may occur, or have occurred, between the issuer and any of its affiliates or other “related parties”. “Related parties” is defined as any officer, director, 10% interest holder of the issuer, or any entity that controls, is controlled by, or is under common control, with the issuer or any of its affiliates.

k. There is no historical production performance history, including well locations, initial production, investor cost versus investor payout, and dry holes drilled.

l. There is no detail of administrative costs, including salaries and overhead expenses to be paid from the offering proceeds.

13. Omission of material facts in offering materials is a violation of KRS 292.320(1)(b).

14. Mr. Powell has indicated that he is willing to enter into a settlement to bring his operations into compliance with the Act.

15. The Division is willing to accept a settlement under certain terms if Powell is willing to bring himself and any entities he controls into compliance with the Act and if he is willing to remain in compliance in the future. Powell has expressed a willingness to do so.

16. In light of the willingness and eagerness on the part of Powell to correct his error, it is not in the public interest to bring a formal action against him provided he is willing to enter into an agreed order to do those things he has undertaken to do and provided he in fact honors his agreements herein.

Accordingly, **IT IS AGREED** as follows:

1. Respondents agree to never violate the Securities Act of Kentucky in the future. In addition, Respondent agrees to never violate the regulations promulgated under the Securities Act of Kentucky or Orders of the Executive Director.

2. Respondents agree that any offer or sale of an undivided interest in an oil and gas lease is by definition a security.

3. Respondents agree and understand that they must register the securities, make a notice filing, or file a claim of exemption from registration, as required.

4. Respondents agree and understand that any offer or sale of securities, if made under Federal Regulation 506 will require a notice filing, Form D, and Uniform Consent to Service of Process along with an established fee within Fifteen (15) days of the sale.

5. Respondents agree and understand that any person who offers securities for sale must be registered as an agent pursuant to KRS 292.330 and that a security cannot be offered or sold by anyone until they first obtain either an exemption or a registration under 292.330.

6. Partners, Officers, and Directors of the issuer need not be registered as agents pursuant to KRS 292.330 if they make no offers or sales of securities. However, if any partners, officers, and directors should engage in the activity of making offers or sales of securities, they must register pursuant to KRS 292.330, notwithstanding their status as partners, officers, and directors, unless such activity is inconsequential in relation to their duties as partners, officers, and directors in terms of time and effort. Furthermore, if the issuer derives most of its income from the sale of securities, rather than some other business activity unrelated to the sale of securities, the partners, officers, and directors must register pursuant to KRS 292.330, notwithstanding their status as partners, officers, and directors.

7. Respondents do further agree and state that for any future offerings that might occur by the respondents, the respondents are to obtain suitable information on any and all investors, including income, net worth, prior investment experience and investment objectives in order to maintain sufficient information to determine the suitability of such investment for said investor.

8. Respondents agree and understand that to offer or sell securities at any time in the future, they must disclose to the investor or potential investor (usually done with a prospectus or an offering circular) all material facts in connection with the investment. Respondents agree and understand that a prospectus, offering circular, and a Private Placement Memorandum are three different versions of the same thing, namely the disclosure document in a securities offering. Respondents agree to provide the Office within 30 days a proposed prospectus, offering circular, or Private Placement Memorandum to the Division for review as to necessary content and form. Respondents

further agree and understand that the securities division will NOT approve or disapprove the language contained in any offering circular or prospectus.

9. Respondents will maintain prospectus logs to document the date a Private Placement Memorandum and Subscription Agreement are sent to and returned from a potential investor.

10. Respondents will maintain a Check Received Log to document the name of the investor, amount invested, and date the investment check was received.

11. Nothing in these settlement terms shall prevent the respondents from transacting business with the industry, investors, or others in a joint venture for the drilling of oil or gas so long as they are in compliance with any applicable rules, laws, and regulations, and so long as they are in compliance with their obligations and undertakings herein.

AGREED TO this the 30<sup>th</sup> day of July, 2004.

by Wally Powell 7/30/04 Wally Powell 7/30/04  
Consolidated Oil and Gas Corporation Date Wally Powell Date

By Wally Powell 7/30/04  
Wally Powell Date

#### ACKNOWLEDGEMENT

County of: Harro

State of Kentucky

On this 30<sup>th</sup> day of July, 2004, Wally Powell personally appeared before me and acknowledged to me that he is authorized to execute this Undertaking on behalf of Consolidated Oil and Gas Corporation, and Wally Powell and that he freely signed this Undertaking on behalf of the entities and on behalf of himself in his personal capacity.

[Signature]  
Notary Public

My Commission Expires: 6-4-07





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Attorney for Respondents (if applicable)      Date

Accordingly, **IT IS ORDERED** that

1. Respondents shall never violate the Securities Act of Kentucky in the future. In addition, Respondents shall never violate the regulations promulgated under the Securities Act of Kentucky or Orders of the Executive Director.

2. Any offer or sale of an undivided interest in an oil and gas lease is by Respondents is by definition a security.

3. Respondents shall register the securities, make a notice filing, or file a claim of exemption from registration, as required, anytime one or several of them offer or sell securities.

4. When Respondents make an offer or sale of securities under Federal Regulation 506, they shall also make a notice filing, file a Form D, and file a Uniform Consent to Service of Process along with an established fee within Fifteen (15) days of the sale.

5. Respondents shall cause to be registered pursuant to KRS 292.330 any person who offers securities for sale for or on behalf of Respondents.

6. Partners, Officers, and Directors of the issuer need not be registered as agents pursuant to KRS 292.330 if they make no offers or sales of securities. However, if any partners, officers, and directors should engage in the activity of making offers or sales of securities, they must register pursuant to KRS 292.330, notwithstanding their status as partners, officers, and directors, unless such activity is inconsequential in relation to their duties as partners, officers, and directors in terms of time and effort. Furthermore, if the issuer derives most of its income from the sale of securities, rather than some other business activity unrelated to the sale of securities, the partners, officers, and directors must register pursuant to KRS 292.330, notwithstanding their status as partners, officers, and directors.

7. Respondents shall not permit a security to be offered or sold by anyone until they first obtain either an exemption or a registration under 292.330.

8. Respondents, for any future offerings that might occur by them, shall obtain suitable information on any and all investors, including income, net worth, prior

9. Respondents shall disclose to the investor or potential investor (usually done with a prospectus or an offering circular) all material facts in connection with the investment. Respondents shall be charged with the knowledge that a prospectus, offering circular, and a Private Placement Memorandum are three different versions of the same thing, namely the disclosure document in a securities offering. Respondents shall provide the Office within 30 days a proposed prospectus, offering circular, or Private Placement Memorandum to the Division for review as to necessary content and form. Respondents shall be charged with the knowledge that the securities division will NOT approve or disapprove the language contained in any offering circular or prospectus.

11. Respondents shall maintain a Check Received Log to document the name of the investor, amount invested, and date the investment check was received.

This is a final and appealable order.

Thomas B. Miller by ~~KTB~~ J. Kelley  
Thomas B. Miller  
Executive Director  
Office of Financial Institutions  
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